

MARK J. BENNETT 2672
Attorney General of Hawaii

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ROBYN M. KUWABE 3001
Deputy Attorney General
Department of Attorney
General, State of Hawaii
Labor Division
425 Queen Street
Honolulu, Hawaii 96813
Telephone: 586-1450

HAWAII LABOR
RELATIONS BOARD

Attorneys for Complainant DARWIN L.D. CHING,
Director of Labor and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. OSH 2007-25
)	(Inspection No. 311428155)
DIRECTOR, DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS,)	STIPULATION AND SETTLEMENT
)	AGREEMENT; EXHIBIT A; APPROVAL
Complainant,)	AND ORDER
)	
vs.)	
)	
JOEL KOETJE, INC.,)	
)	
Respondent.)	
)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant DARWIN L.D. CHING, Director of Labor and Industrial Relations ("Director") and Respondent JOEL KOETJE, INC. ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about September 20, 2007, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's

workplace located at 4520 Alae Road, Kekaha, Hawaii 96752.

As a consequence of said inspection, the Director issued a Citation and Notification of Penalty on October 22, 2007 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$600.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 4520 Alae Road, Kekaha, Hawaii 96752.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22.
5. The Citation is amended as follows:
 - a. Citation 1, Item 1, 29 CFR 1926.501(b)(13) [Refer to chapter 12-121.2, HAR], and its characterization as serious is affirmed but the description of the violation is reworded to state, "One employee was observed working 9 feet above the lower level without

any type of fall protection, thus, exposing the employee to a fall hazard which could result in serious injuries or death.”

b. Citation 1, Item 2, 29 CFR 1926.1053(b)(1) [Refer to chapter 12-154.1, HAR], and its characterization as serious is affirmed, however, the description of the violation is reworded to state, “One employee was using a Werner 8-foot ladder where the side rails did not extend 3 feet above the upper landing, thus exposing the employee to an 8-foot fall to the lower levels below which could result in serious injuries or death.”

6. The Director reduces the aggregate penalty from \$600.00 to \$420.00. As part of this Agreement, Respondent shall purchase a fall protection banner as described in paragraph 9 herein which costs approximately \$300.00. Thus, Respondent shall pay the amount of \$120.00 in full to the Director of Budget and Finance upon the execution of this Agreement.

7. Respondent shall provide training to all of its employees in Fall Protection. Respondent shall submit its training materials and outline for approval by the Director fourteen (14) days prior to the Training. Respondent shall provide the Director with written verification that it has trained all its employees in Fall Protection within thirty (30) days from the date this Agreement is filed. The verification shall show the date of the training session, the topic of the training session, the name(s) of the employee(s) trained, and be signed by the person who conducted the training.

8. Respondent shall have all its employees who are required to use fall protection, view the Fall Protection Training video on HIOSH’s website at www.hawaii.gov/labor/hiosh/fall_video.shtml, or borrow a copy from the HIOSH library. Respondent shall submit within thirty (30) days of the execution of this agreement a letter confirming that this requirement was met and the names of the employees who have viewed the

video.

9. Respondent shall participate in the Department of Labor and Industrial Relations' fall protection safety initiative by purchasing an approved eight-feet by four-feet banner, and prominently posting it at its baseyard or a worksite for four (4) consecutive months after submittal of the proof of purchase of the banner. The banner may be purchased from any printer of Respondent's choice. Respondent shall coordinate with the Director in obtaining the approved banner design. Within thirty (30) days of this Agreement, Respondent shall provide the Director with proof of the purchase of the banner. After posting the banner for the specified period, Respondent shall certify to the Director that it has complied with its agreement to post.

10. Respondent shall create and implement written policies for fall protection and use; communicate the policies to its employees and train them on the policies; implement steps to detect and correct violations of the policies; enforce the policies; and provide HIOSH with a copy of the written policies within thirty (30) days of the execution of this Agreement.

11. In order to help improve Respondent's occupational safety management system, Respondent agrees to request consultation safety services from HIOSH's Consultation and Training (C&T) Branch by completing the attached form within thirty (30) days from the execution of this Agreement.

12. By entering into this Agreement, Respondent does not admit that it violated the cited standards for any litigation or purpose other than proceedings under the Hawaii Occupational Safety and Health Law.

13. If Respondent fails to fulfill any condition of this Agreement within the time stated, then, Respondent shall automatically and without further notice be liable for the entire original penalty in the amount of \$ 600.00. All amounts shall be immediately due and

owing. If Respondent fails to pay all penalties and the Director institutes legal action to collect on the outstanding amount due, Respondent agrees to pay all fees and costs, including reasonable attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

14. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

15. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three (3) working days (excluding weekends and State holidays).

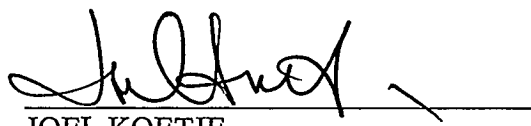
16. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

17. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

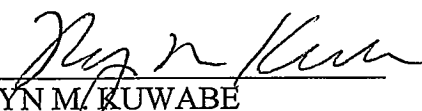
18. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

DATED: ^{Kaunoi} Honolulu, Hawaii, 2/6/06.

JOEL KOETJE, INC.

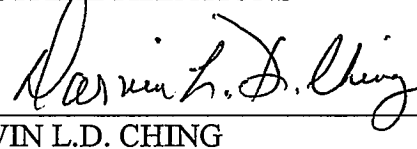

JOEL KOETJE
Owner

APPROVED AS TO FORM:

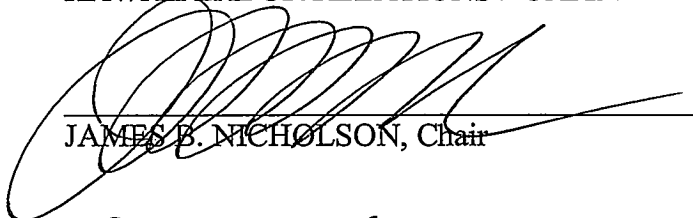

ROBYN M. KUWABE

Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS


DARWIN L.D. CHING

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:


JAMES B. NICHOLSON, Chair


EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

ORDER NO. 276

DATED: February 26, 2008

HIOSH Consultation Request Form (Per Informal Settlement Agreement)

Request Date: 2 / 6 / 08

Inspection # 311428155

Branch: Safety

Establishment Information:

Establishment Name	Joel Koetje Inc	Ownership	<input checked="" type="checkbox"/> Private Sector <input type="checkbox"/> Local Govt. <input type="checkbox"/> State Govt.
Site Info	Address 4520 Alae Rd		
	City Kekaha	State HI	Zip Code 96752
Mailing Info	Address P O Box 1028		
	City Kalaheo	State HI	Zip Code 96741
Type of Business			
Employer Contact Data	First Name Joe	Last Name Ruff	
	Title Field Supervisor		
	Phone # 808-337-2800	Ext.	Fax #
	Cell - 808-635-2611		

Employee Information:

Number In Establishment	6	Number Covered	6	Number Controlled	6
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Source of Request:

<input type="checkbox"/> A. Client Referral	<input type="checkbox"/> I. OSHA Publication
<input type="checkbox"/> B. Direct Solicitation by Telephone	<input type="checkbox"/> J. OSHA Complaint/Referral
<input type="checkbox"/> C. Direct Solicitation by Mail	<input type="checkbox"/> K. Other
<input type="checkbox"/> D. Direct Solicitation Door to Door	<input type="checkbox"/> L. Professional/Trade Association Meeting
<input type="checkbox"/> E. Media (Newspaper/Magazine)	<input type="checkbox"/> M. Professional/Trade Association Publication
<input type="checkbox"/> F. Media (Radio)	<input type="checkbox"/> N. Referral From Other Discipline
<input type="checkbox"/> G. Media (Television)	<input type="checkbox"/> O. Safety/Health Conference
<input type="checkbox"/> H. New Standard	<input checked="" type="checkbox"/> P. Settlement/Litigation Referral

Services Requested:

Full Service (Circle One)	Safety	Health	Both
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Requested By	<u>Joel Koetje</u>	Title	<u>Owner</u>	Date	<u>2/6/08</u>
Signature	<u>[Signature]</u>				

ATTACHMENT

Rev. 6/06

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7006 2150 0004 4051 3963

Citation and Notification of Penalty

To:
Joel Koetje Inc
and its successors
P O Box 1028
Kalaheo, HI 96741

Inspection Number: 311428155 (Ray Mishima)
Inspection Date(s): 09/20/2007 - 09/20/2007
Issuance Date: 10/22/2007
OSHCO ID: Y5214
Optional Report No.: 07007
Inspection Type: Referral
Scope of Inspection: Partial Inspection

Inspection Site:
4520 Alae Rd
Kekaha, HI 96752

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For Willful and Repeat violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as Serious and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 10/22/2007. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 311428155
Inspection Dates: 09/20/2007 - 09/20/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 10/22/2007

Citation and Notification of Penalty

Company Name: Joel Koetje Inc
Inspection Site: 4520 Alae Rd, Kekaha, HI 96752

Citation 1 Item 1 Type of Violation: Serious

29 CFR 1926.501(b)(13) [Refer to chapter 12-121.2, HAR] was violated because:

Two employees were observed working 13 feet above the lower levels without any type of fall protection, thus exposing the employees to a fall hazard which could result in serious injuries or death.

29 CFR 1926.501(b)(13) states "Residential construction. Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be protected by guardrail systems, safety net system, or personal fall arrest system unless another provision in paragraph (b) of this section provides for an alternative fall protection measure. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of 1926.502."

Location: Jobsite, west end

Date By Which Violation Must be Abated:
Penalty:

10/29/2007
\$300.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 311428155
Inspection Dates: 09/20/2007 - 09/20/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 10/22/2007

Citation and Notification of Penalty

Company Name: Joel Koetje Inc
Inspection Site: 4520 Alae Rd, Kekaha, HI 96752

Citation 1 Item 2 Type of Violation: Serious

29 CFR 1926.1053(b)(1) [Refer to chapter 12-154.1, HAR] was violated because:

Two employees were using a Werner 8-foot ladder where the side rails did not extend 3 feet above the upper landing, thus exposing the employees to an 8-foot fall to the lower levels below which could result in serious injuries or death.

29 CFR 1926.1053(b)(1) states "When portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least 3 feet (.9 m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at its top to a rigid support that will not deflect, and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder. In no case shall the extension be such that ladder deflection under a load would, by itself, cause the ladder to slip off its support."

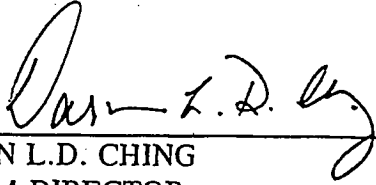
Location: Jobsite

Date By Which Violation Must be Abated:

10/29/2007

Penalty:

\$300.00



DARWIN L.D. CHING
INTERIM DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813

SUMMARY OF PENALTIES

Company Name: Joel Koetje Inc
Inspection Site: 4520 Alae Rd
Kekaha, HI 96752
Issuance Date: 10/22/2007

Summary of Penalties for Inspection Number 311428155

Citation 01, Serious = \$600.00



Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.